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State of Utah v. D.M. and A.M. : Brief of Petitioner

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, in the interest of N.A.M., children under eighteen years of age,	)	
STATE OF UTAH, Petitioner/Appellee,	)	
vs.	)	Case No. 981050-CA
D.M. and A.M. Respondents/Appellants	)	Priority 4

BRIEF OF PETITIONERS, ALARIK AND STACI MYRIN

Appeal from the Eighth District Juvenile
Court of Duchesne County, State of Utah
The Honorable Scott N. Johanson

GAYLE F. McKEACHNIE - 2200
CLARK B ALLRED - 6113
McKEACHNIE, ALLRED, McCLELLAN
& TROTTER, P.C.
121 West Main Street
Vernal, Utah 84078
Attorneys for Appellees, Alarik and
Staci Myrin, foster parents

JULIE G. McPHERSON
321 South 600 East
Salt Lake City, Utah 84102
Attorney for Appellants

MARTHA PIERCE
Office of the Guardian ad Litem
450 South State Street
P.O. Box 14043
Salt Lake City, Utah 84114-0403

CAROL VERDOIA
Assistant Attorney General
160 East 300 South, 6th Floor
P.O. Box 140833
Salt Lake City, Utah 84114-0833

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CAROL VERDOIA
Assistant Attorney General
160 East 300 South, 6th Floor
P.O. Box 140833
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STATEMENT OF JURISDICTION

The Court of Appeals has jurisdiction in this matter pursuant to Utah Code Ann. § 78-2a-3(2)c and § 78-3a-909.

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the findings of fact and the evidence support the trial court's conclusions that: 1. the parents had abandoned N.A.M., 2. there was a failure of parental adjustment, 3. there had only been token efforts made by appellants to avoid being unfit parents, and 4. the mother had neglected N.A.M. and the father was unfit.

STANDARD OF REVIEW

The appellants argue that this review is an issue of law reviewed for correctness. However, the appellants are challenging or ignoring the facts found and relied on by the court. The standard of review, therefore, requires the appellants to marshall the facts in support of the findings and then demonstrate that the court's findings are so lacking in support as to be against the clear weight of the evidence. D.G. v. State, 938 P.2d 298, 301 (Ut. Ct. App. 1997); State in the Interest of T.J., 945 P.2d 158 (Ut. Ct. App. 1997) and State in the Interest of M.W. 1998 WL 876390 (Ut. Ct. App. 1998).

STATUTES

Utah Code Ann.78-3a-313.5(1) **Mandatory petition for termination of parental rights.**

(1) For purposes of this section, "abandoned infant" means a child who is 12 months of age or younger whose parent or parents:

(a) although having legal custody of the child, fail to maintain physical custody of the child without making arrangements for the care of the child;

(b) have failed to maintain physical custody, and have failed to exhibit the normal interest of natural parent without just cause: or

(c) are unwilling to have physical custody of the child.

Utah Code Ann.78-3a-407. **Grounds for termination of parental rights.**

The court may terminate all parental rights with respect to one or both parents if it finds any one of the following:

(1) that the parent or parents have abandoned the child;

(2) that the parent or parents have neglected or abused the child;

(3) that the parent or parents are unfit or incompetent;

(4) that the child is being cared for in an out-of-home placement under the supervision of the court or the division, that the division or other responsible agency has made a diligent effort to provide appropriate services and the parent has substantially neglected, wilfully refused, or has been unable or unwilling to remedy the circumstances that cause the child to be in an out-of-home placement, and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care in the near future;

(5) failure of parental adjustment, as defined in this chapter;

(6) that only token efforts have been made by the parent or parents:

(a) to support or communicate with the child;

(b) to prevent neglect of the child;

(c) to eliminate the risk of serious physical, mental, or emotional abuse of the child; or

(d) to avoid being an unfit parent;

(7) the parent or parents have voluntarily relinquished their parental rights to the child, and the court finds that termination is in the child's best interest; or

(8) the parent or parents, after a period of trial during which the child was returned to live in his own home, substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection.

Utah Code Ann.78-3a-408. **Evidence of grounds for termination.**

(1) In determining whether a parent or parents have abandoned a child, it is prima facie evidence of abandonment that the parent or parents:

(a) although having legal custody of the child, have surrendered physical custody of the child, and for a period of six months following the surrender have not manifested to the child or to the person having the physical custody of the child a firm intention to resume physical custody or to make arrangements for the care of the child;

(b) have failed to communicate with the child by mail, telephone, or otherwise for six months;

(c) failed to have shown the normal interest of natural parent, without just cause; or

(d) have abandoned an infant as described in Section 78-3a-313.5.

(2) In determining whether a parent or parents are unfit or have neglected a child the court shall consider, but is not limited to, the following circumstances conduct, or conditions:

(a) emotional illness, mental illness, or metal deficiency of the parent that renders him unable to care for the immediate and continuing physical or emotional needs of the child for extended periods of time;

(b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive nature;

(c) habitual or excessive use of intoxicating liquors, controlled substances,

or dangerous drugs that render the parent unable to care for the child;

(d) repeated or continuous failure to provide the child with adequate food, clothing, shelter, education, or other care necessary for his physical, mental, and emotional health and development by a parent or parents who are capable of providing that care. However, a parent who, legitimately practicing his religious beliefs, does not provide specified medical treatment for a child is not for that reason alone a negligent or unfit parent;

(e) with regard to a child who is in the custody of the division, if the parent is incarcerated as a result of conviction of a felony and the sentence is of such length that the child will be deprived of a normal home for more than one year; or

(f) a history of violent behavior.

(3) If a child has been placed in the custody of the division and the parent or parents fail to comply substantially with the terms and conditions of a plan within six months after the date on which the child was placed or the plan was commenced, whichever occurs later, that failure to comply is evidence of failure of parental adjustment.

(4) The following circumstances constitute prima facie evidence of unfitness:

(a) sexual abuse, injury, or death of a sibling of the child, or of any child, due to known substantiated abuse or neglect by the parent or parents;

(b) conviction of a crime, if the facts surrounding the crime are of such a nature as to indicate the unfitness of the parent to provide adequate care to the extent necessary for the child's physical, mental, or emotional health and development;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child; or

(d) the parent has committed, aided, abetted, attempted, conspired, or solicited to commit murder of manslaughter of a child or child abuse homicide.

Utah Code Ann. 78-3a-409. **Specific considerations where child is not in physical custody of parent.**

(1) If a child is not in the physical custody of the parent or parents, the court, in determining whether parental rights should be terminated shall consider, but is not limited to, the following;

(a) the physical, mental, or emotional condition and needs of the child and his desires regarding the termination, if the court determines he is of sufficient capacity to express his desires; and

(b) the effort the parent or parents have made to adjust their circumstances, conduct, or conditions to make it in the child's best interest to return him to his home after a reasonable length of time, including but not limited to:

(i) payment of a reasonable portion of substitute physical care and maintenance, if financially able;

(ii) maintenance of regular visitation or other contact with the child that was designed and carried out in a plan to reunite the child with the parent or parents; and

(iii) maintenance of regular contact and communication with the custodian of the child.

(2) For purposed of this section, the court shall disregard incidental conduct, contributions, contacts, and communications.

STATEMENT OF THE CASE

A. Nature of the Case.

N.A.M. was born to the appellants (parents) on April 22, 1996. Based on a referral from the hospital, N.A.M. was taken into the custody of the Division of Child and Family Services (DCFS) at her birth. N.A.M. was returned to the parents under protective supervision for a short time. Because of concerns about the physical environment of the parents, including problems reflected

in an evaluation and the parents' lack of ability to operate a heart monitor and perform CPR, N.A.M. was taken back into protective custody. On June 12, 1996, an adjudication and disposition hearing was held. The parents admitted the allegations in the petition and N.A.M. was placed in the temporary custody of the State. N.A.M. was placed by the state in the foster care of Alarik (Rick) and Staci Myrin. Reunification services were provided until a court hearing on April 23, 1997. Because the parents' problems had not been remedied, and in fact, had become worse, the court ordered that reunification services cease. On May 8, 1997, the State of Utah filed a petition to terminate the appellants' parental rights. The foster parents, Rick and Staci Myrin, joined in that petition and filed their own Petition to Terminate Parental Rights pursuant to Utah Code Ann. §78-3a-404(1) on May 8, 1997.

B. Course of Proceedings and Disposition at the Trial Court.

Trial on the petition to terminate parental rights was held on October 28 and 29, 1997. At the conclusion of the hearing, the court entered its findings of fact and conclusions of law, setting forth several grounds for terminating the appellants' parental rights. The court then entered its order on December 1, 1997 terminating the appellant's parental rights. This appeal followed.

STATEMENT OF FACTS

N.A.M. was born April 22,1996. At the time of her birth, she had a serious medical condition which required the use of a heart monitor. T. 47. The parents were unable to care for N.A.M., or operate the necessary equipment to monitor her heart condition. The hospital made a referral to the Division of Child and Family Services (DCFS). As a result of the referral, N.A.M. was placed in foster care while the parents received training on how to care for her. The parents proved unable to learn the techniques necessary to maintain their daughter's health. This, as well as additional problems in their home, resulted in N.A.M. being taken into protective custody. The Adjudication and Disposition hearing was held June 12, 1996.

At the Adjudication and Disposition hearing, the parents admitted the allegations in the petition. The court ordered that N.A.M. be placed in the temporary custody of the State of Utah and a reunification plan was to be implemented. A service plan was established which included peer parenting to establish parenting skills, creating and maintaining a home appropriate for a new-born, training for CPR and heart monitoring, and visitation with the child. Exhibit 3.

Psychological evaluations were performed in May 1996 on each parent by Intermountain Specialized Abuse Treatment Centers. Exhibits 6 and 7. The conclusion on Dennis Mace was that *"[i]t*

appear[ed] unlikely that Dennis would be able to adequately care for his child without considerable assistance." The evaluation further noted that *"Dennis should not be allowed to care for his child unless supervised by another adult."* Exhibit 6 The evaluation on Amy Mace was that she had "*the learning and understanding skills to care for N.A.M., if sufficiently motivated to do so."* The study recommended that (due Amy's defensiveness, minimizing, lack of insight and other testing results), she be required to: 1. Provide a clean, healthy environment for N.A.M., 2. Attend a parenting program, 3. That in-home assistance be provided to teach her to care for N.A.M., and, 4. Complete an intensive therapy program to learn parenting skills and to deal with her previous abuse problems. Exhibit 7, page 6.

Pat Fox (Gordon) was assigned as the peer parent. T.49 Extensive visits were made by Pat Fox to train the parents. T.156 On July 12 - 13, 1996 an overnight visit was scheduled with the parents and N.A.M. T.59-60 The parents called Pat Fox repeatedly because of their inability to handle the heart monitor. T.332 One of the problems was that they forgot to plug the machine into the electrical outlet. T.375

After that overnight visit the parents started showing a lack of interest T.64-65. They would resist the training by the peer parent T.328, were reluctant to hold N.A.M., and stated that they did not want N.A.M. T.336. The parents also showed a lack of

ability to remember the instructions given to them by the peer parent T.372. Also, during this period of time, an aunt, with whom the parents lived, started caring for the baby instead of the parents.

In conjunction with the deficiencies the parents demonstrated with their child care training, they continued to fail to recognize the importance of a healthy environment for their child. The parents persisted in residing with an individual with a substantiated sex abuse referral, and the house did not even meet basic standards of cleanliness. T. 71,133,380

Near the end of August 1996, the parents moved, without any notice to DCFS, and lost all contact with DCFS. T.70-73 The worker assigned by DCFS (William McCairn) attempted to locate the parents. He called their attorney several times. T.77-78 The parents had not even informed their own attorney of their address or telephone number T.457. In late October, 1996, Mr. McCairn came in contact with N.A.M.'s parents while visiting a home on a different case T.76. He requested that they contact him. He heard nothing from the parents. In December, Mr McCairn, attempted to locate the parents by searching the Town of Myton. T.79

A court review hearing was scheduled for December 18, 1996. The parents were in attendance. From August 23 through December 18, 1996, the parents had not complied with the treatment plan. T.151. They had not visited N.A.M. or had any other type of

contact from August 23 through December 1996 (four months) T.81. They had no contact with DCFS and no peer parenting training during that time period T.136. During that four month time period, they showed no interest in N.A.M., or in improving their ability to care for her. At the review hearing, the court ordered that efforts continue to reunify the parents and N.A.M.. Following the court hearing on December 18, 1996, the new DCFS worker, Jennifer Johnson, asked the parents to schedule a visit. T.204 The parents did not schedule a visit. Ms. Johnson then called the parents' attorney to schedule a visit T.205. Finally, on January 2, 1997, DCFS was able to arrange a visit between the parents and N.A.M. T.206

A new service plan was developed (Exhibit 3). The service plan included parenting classes, WIC nutrition classes, peer parenting, and supervised visits. The parents were also to work toward improving their financial condition and become self sufficient. The DCFS worker, Jennifer Johnson, read the plan to the parents and discussed it in detail. She explained that there was only a short time period left to develop the ability to care for N.A.M. and that they had to be serious and comply with the plan. T.212-216, Exhibit 3 Ms. Johnson and the peer parent set up parenting classes on two occasions, including a private parenting class. T.208, 220, 252-254, 341. The parents refused to attend either of the parenting classes. The parents were given the

information regarding the WIC nutrition class. The parents refused to attend the nutrition class. Jennifer Johnson testified that Amy, the mother, seemed terrified of N.A.M., that the parents made no efforts to comply with the plan, and that they did not seem to be serious about wanting N.A.M. in their home. T.213. The only compliance with the plan (visits and peer parenting) were instituted by DCFS who would take the child and peer parent to the parents' home. Even with DCFS scheduling the visits, the parents canceled some, and often were not home or were late for the scheduled visit T.271.

Supervised visits were held on January 2, January 9, and February 6, 1997. During that time period it was the conclusion of the DCFS worker that the parents were not complying with the treatment plan T. 234. A new DCFS worker, Erin Williams, was assigned to the case at the end of February, 1997. She also attempted to arrange parenting classes, and set up visits. The parents' visits were sporadic and often canceled T.259-263.

The peer parent, Pat Fox, again went into the home from February through April 1997 to show and teach the parents parenting skills and how to care for N.A.M. T.340. Pat Fox found that there had been no improvement in the parenting skills and that nothing had been retained from the parenting skills that were taught in June and July 1996. T.372 Furthermore, the peer parent found that each time she had to repeat the instructions from the previous

visit as the parents seemed unable or unwilling to retain the instructions. T.378 The parents seemed overwhelmed, detached and not interested. N.A.M. also did not tolerate the visits very well. T.345, 377

The parents were not complying with the second service plan by failing to attend parenting classes, failing to attend the WIC nutrition classes, failing to make efforts to improve financially and failing to follow the instructions and learn the parenting skills taught by the peer parent. The court therefore ordered that reunification services cease as of April 23, 1997. A change was made in the permanency plan to place N.A.M. for adoption. Therefore, in May 1997 a petition to terminate parental rights was filed by the State of Utah which was joined in by the foster parents (Myrins). The Myrins also filed their own petition to terminate parental rights. The parents made no effort to have contact with N.A.M. from April 3, 1997 until the trial on October 28, 1997. N.A.M. has lived with the foster parents, the Myrins her entire life. T.153

A bonding study was prepared in March 1997 by Craig Ramsey, a bonding evaluator expert. (Exhibit 5) His findings were that N.A.M. did not function well with the natural parents, that she exhibited stress and showed stranger anxiety T.175, Exhibit 5, that there was no significant bonding with the natural parents and that N.A.M. showed a preference to be with the evaluator rather than the

natural parents. T.182 The bonding of N.A.M. was with the foster parents. He further found that the parents lacked basic parenting skills. Exhibit 5 The responses of N.A.M. toward the natural parents clearly demonstrated either that there had been infrequent visits or the visits had not been safe or productive. T.191 The expert expressed his professional opinion that removal of N.A.M. from the foster parents would cause significant trauma to N.A.M. and that N.A.M. would not function and develop properly in the care of the natural parents. T. 174-192 and Exhibit 5

SUMMARY OF ARGUMENT

The court found that the parents did not avail themselves of necessary training relating to parenting skills and use of a heart monitor, that the parents exhibited a lack of interest in N.A.M., that the parents did not retained parenting skills taught by the peer parent, that the parents living conditions were unacceptable because they were living with relatives or others who were unacceptable due to substantiated sex abuse charges or who's homes did not meet basic minimum standards of cleanliness, that the parents lost interest in N.A.M., visited sporadically and went months without contact with DCFS or N.A.M., that the parents failed to comply with two service plans, that the parents failed to participate in parenting classes and WIC services on nutrition provided to them, that there is no bonding and no parent child relationship between the parents and N.A.M. and that the only

parent N.A.M. knows and is bonded to is her foster parents. Those factual findings support all the reasons provided by law and found by the court to terminate the parent's parental rights.

ARGUMENT

I. APPELLANTS CANNOT CHALLENGE THE FINDINGS OF FACT WITHOUT MARSHALING THE EVIDENCE IN SUPPORT OF THOSE FINDINGS OF FACT. ALTERNATIVELY, APPELLANTS CANNOT CLAIM THAT THE FINDINGS OF FACT DO NOT SUPPORT THE CONCLUSIONS OF LAW BY IGNORING THE FINDINGS OF FACT THAT SUPPORT THE CONCLUSIONS OF LAW.

Appellants' primary arguments (Arguments A thru D) are that the findings of fact do not support the trial court's conclusions of law. That argument fails, not only because it is untrue, but because appellants ignore the findings of fact that support the court's conclusion. Appellants cannot challenge the sufficiency of their disputed findings of fact without marshaling the facts in support of those findings. The appellants admit that the trial court's findings of fact are not clearly erroneous. See page 14 of Appellant's Brief. Despite that admission the appellants then proceed to rely on their version of the facts without marshaling all the evidence in support of the findings of fact. D.G. v. State, 938 P.2d 298, 301 (Utah Ct. App. 1997); State in the Interest of T.J., 945 P.2d 158 (Utah Ct. App. 1997) and State in the Interest of M.W. 1998 WL 876390 (Utah Ct. App. 1998).

Examination of the court's findings shows that there are several grounds upon which to terminate the appellants' parental rights. Those grounds include: a) abandonment of the child because

of the parents' conscious disregard of their parental obligations, which led to destruction of the parent/child relationship; b) neglect of the child by the mother; c) the unfitness or incompetence of the father making him unable to care for N.A.M. for extended periods of time; d) the unwillingness or inability of the parents to remedy the circumstances that caused N.A.M. to be removed from the parents' home; e) the substantial likelihood that the parents would not be capable of providing proper parental care in the near future; f) the lack of concern demonstrated by the parents to make appropriate parental adjustments by failing to comply with two different service plans; and g) the token efforts or no efforts made by the parents to remedy the deficiencies in their parenting skills.

Even though the court found several grounds to terminate the parental rights, only one is necessary to sustain the court's termination of parental rights. Utah Code Ann. §78-3a-407; see also State v J.N., 920 P.2d 430 (Utah App. 1998). The appellants do not challenge the court's findings and conclusions regarding the best interest of N.A.M. that she be adopted by the foster parents.

The issue therefore, is whether the findings of fact support the court's decision to terminate parental rights. A review of the evidence shows that the findings of fact clearly support all the grounds used by the court to terminate the parental rights.

II. APPELLANTS' FAILURE TO MAINTAIN CONTACT WITH N.A.M., FAILURE TO SHOW THE NORMAL INTEREST OF A PARENT IN N.A.M., FAILURE TO COMPLY WITH SERVICE PLANS, FAILURE TO LEARN BASIC PARENTING SKILLS, AND REFUSAL TO ATTEND PARENTING AND NUTRITION CLASSES RESULTED IN NO DEVELOPMENT OF THE PARENT/CHILD RELATIONSHIP. THE ONLY PARENTS KNOWN TO N.A.M. ARE HER FOSTER PARENTS WITH WHOM SHE HAS LIVED SINCE HER BIRTH MORE THAN THREE YEARS AGO.

A. The Appellants Abandoned N.A.M. by Refusing to Maintain Contact with Her and by Showing Very Little Interest in Her.

The trial court concluded that the parents had abandoned N.A.M. as defined in Utah Code Ann. 78-3a-407(1). That, as a result of the parents' conscious disregard of their parental obligations, the parent child relationship had been destroyed. See Conclusion of Law A. Abandonment includes failure to communicate with the child for a period of six months or failure to maintain physical custody and then failure to show the normal interest of a natural parent without just cause. Utah Code Ann. §§ 78-3a-408(1) and 78-3a-313.5.

Numerous findings of fact support that conclusion, including the fact that there had been no visitation or contact with N.A.M. from August 1996 until January 2, 1997 and from April 3, 1997 through October 28, 1997, the date of the trial. See Findings of Fact L, Q and V. Numerous findings of fact clearly illustrate the parents' failure to show a natural parent's interest in N.A.M. The court concluded that this evidenced a lack of a parent child relationship. The findings of the court include consideration by

the court of the failure of the parents to comply with the service plans, the failure of the parents to make efforts to develop parenting skills, and the significant periods of time in which the parents did not maintain contact with the N.A.M.. This pattern of behavior by the parents continued despite extensive efforts by DCFS to reunify N.A.M. and the parents. The bonding study in March 1997 showed that there was no relationship between the parents and N.A.M.. This lack of relationship was caused by the appellants' multiplicity of failures, including a failure to show an interest in N.A.M.

B. The Mother Neglected N.A.M. by Refusing to Develop Basic Parenting Skills. Her Lack Of Skills Made Her Incapable of Providing For N.A.M.'s Most Basic Needs.

The trial court also concluded that the mother had neglected N.A.M. In reaching that conclusion, the court relied on Utah Code Ann.§ 78-3a-409. The court concluded that the mother had failed to provide N.A.M. "with adequate food, clothing, shelter, education or other care necessary for the physical, mental and emotional health and development of the child." Conclusion of Law B.

Appellants argue that there were no facts to support that conclusion, claiming that the appellants always had food and a home available for N.A.M.. In making that argument, appellants ignore the court's findings that the appellants, at times, did not even have a home that met minimum cleanliness standards, (Finding of

Fact J) that they, at times, resided with relatives who were unacceptable or with an individual with a substantiated sex abuse history, (Finding of Fact J), and that, for a significant period of time, they had no home or at least failed to provide any information about their living arrangements to DCFS. (Finding of Fact K).

Appellants also ignore the court's conclusions (and the law) that neglect also includes the failure to provide other care necessary for the physical, mental, and emotional health and development of N.A.M.. The psychological evaluation on the mother showed that she was capable of learning parenting skills. Finding the Fact M and Exhibit 6. Despite that ability, the mother did not avail herself of the necessary training on the heart monitor, (Finding of Fact C), she showed a lack of interest in caring for N.A.M., (Finding of Fact F), she did not try to learn parenting skills, showed a lack of interest in N.A.M., and eventually lost contact with N.A.M. and DCFS from August through December, 1996. (Findings of Facts F and I thru L). The court also found that, despite extensive efforts in January thru March 1997, the mother did not attend parenting classes and did not avail herself of training on nutrition. (Finding of Fact R) The bonding study indicated that the lack of effort by the mother resulted in no bonding between N.A.M. and the mother and that the emotional,

physical and mental health and development of N.A.M. had been provided solely by the foster parents. (Findings of Fact N, T, V).

C. The Psychological Evaluation of the Father Showed that he is Unfit as a Parent.

The trial court concluded that the father was unfit or incompetent in that his mental deficiency rendered him unable to care for the immediate and continuous physical and emotional needs of N.A.M. for an expanded period of time. (Conclusion of Law C). That conclusion is fully supported by the psychological evaluation of the father (Exhibit 7), and Finding of Fact M which is based on that evaluation.

Appellants' argument on this point is misplaced on two counts. Their first error is that the court's Conclusion of Law did not apply to the mother. The second error is that Appellants' argument relies on Utah Code Ann. 78-3a-408(4), while ignoring Utah Code Ann. 78-3a-408(2)a, the statutory basis the court used.

D. Appellants Did Not Comply With the Service Plans Developed to Help Them Develop Parenting Skills.

The trial court concluded that, despite diligent efforts by DCFS, that there had been a failure of parental adjustment by the parents. (Conclusions of Law D and E) Because those Conclusions of Law are supported by the Findings of Fact and the record, the Appellants argue that the issue of parental adjustment should be limited to whether the parents were able to learn to operate the

heart monitor.[1] Failure of parental adjustment is not limited only to the initial concern that gave rise to the removal of the child. S.L. v State, 965 P.2d 551 (Utah Ct. App. 1998). Even if that were the law, the ability to operate the heart monitor was only one of the reasons N.A.M. was removed from Appellants' care. The Shelter, Adjudication and Disposition Order from the hearing of June 12, 1996 found, based on the admissions of the parents, that the physical environment of the parents posed a threat to the health and safety of N.A.M. and that leaving N.A.M. in the home would be contrary to her welfare. The court directed the establishment of a treatment plan to try and remedy those problems. Prior to that hearing, the psychological evaluations had been performed which also showed problems with the parents' abilities to care for N.A.M.

A determination of a failure of parental adjustment requires findings that the parents were unable or unwilling, within a reasonable time, to substantially correct the circumstances, conduct or conditions that led to the child being outside the home. Utah Code Ann.§ 78-3a-403(2), S.L. v State, 965 P.2d 551 (Utah Ct. App. 1998) and State in the Interest of G.D., 894 P.2d 1278 (Utah Ct. App. 1995). A parent's failure to substantially comply with a

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[1]The parents initially appeared to have learned how to operate the heart monitor, but, when left on their own at the July overnight visit, they did not even plug it into the electrical outlet and had to call the peer parent repeatedly to assist them with the heart monitor.

service plan is evidence of the failure of parental adjustment. Utah Code Ann. §78-3a-408(3); State in the Interest of G.D. Supra.

The Findings of Fact show that a service plan was developed following the Adjudicative hearing in June 1996 (Finding of Fact E). The Findings show that peer parenting was set up with the peer parent, who was on call. The peer parent visited the parents thirteen out of the first thirty days. The Findings show that the peer parent provided training on the monitor, that the home was visited and inspected by DCFS and that the parents received attention from DCFS thirty-three different times from June 12 thru August 30 (Findings of Fact F thru J). Despite such extensive and intensive efforts by DCFS, the parents failed to comply with the service plan and simply disappeared for three and a half months. (Finding of Facts K and L). When the parents resurfaced in late December of 1996, a second service plan was prepared. Again, a peer parent went back into the home, and parenting classes and nutrition classes were provided. Again, the parents failed to comply with the second service plan. They failed to go to the parenting class established by DCFS, they failed to attend the nutrition classes, they failed to maintain a regular visitation schedule and failed to learn any parenting skills. (Findings of Fact O through U)

The court's conclusion that, despite reasonable and appropriate efforts by DCFS to return N.A.M. to the parents, the

parents failed to comply with the two service plans and had not remedied the conditions that caused the removal of the child from the home, is supported by the record and should be sustained.

E. The Appellants Did Not Make Even Token Efforts to Learn How to Care for N.A.M. or to Show An Interest in N.A.M.

The court further found that the parents had made only token efforts and, in some cases, no effort to support or communicate with N.A.M., to eliminate the risk of serious physical, menta or emotional abuse and to avoid being unfit. Utah Code Ann. §78-38-407(6). The appellants argue that their visits with the peer parent, training on the heart monitor and the psychological evaluations were more than token efforts.

In reality, the visits with the peer parent and the training on the monitor were not even token efforts. The psychological evaluations were in May 1996 to provide information and had nothing to do with avoiding being unfit parents. During the visits with the peer parent, the parents retained no parenting skills, showed lack of interest, and had no contact with the peer parent for significant periods of time. The parents failed to attend parenting classes, failed to attend nutrition classes, failed to work with the peer parent and retain parenting skills, visited only sporadically and showed no interest in developing the skills that would help them to be fit parents. Such action, or lack thereof, demonstrates their lack of commitment to this child.

III. APPELLANTS' ARGUMENTS AT POINTS F AND G ARE IMMATERIAL TO THE COURTS' CONCLUSIONS TERMINATING PARENTAL RIGHTS.

Appellants' arguments at points F and G of their brief are immaterial to the issues before the Court. Appellants' argument F that the father had ability to care for himself has no relevance to the issues at hand. It was undisputed (and the psychological evaluation determined) that he is unable to care for N.A.M. Appellants' argument G as to whether the parents attended six rather than five parenting classes taught by the sister of their attorney is immaterial. They failed to attend the parenting classes set up by DCFS and never learned the basic skills needed to parent N.A.M.

CONCLUSION

The court found that both parents' rights should be terminated because of abandonment, failure of parental adjustment, and making only token efforts to avoid being an unfit parent. In addition, the court found that the mother had neglected N.A.M. and the father was unfit. Each of those grounds, alone, is sufficient to sustain the court's termination of the parental rights. Each of those grounds is supported by the Findings the Fact and the record.

As this Court said in N.T. vs. State 928 P.2d 393, 401, (Utah App.1996) N.A.M. "deserve(s) a stable, structured environment with parents able to nurture, love, and provide for (her) special needs." N.A.M. "cannot remain in legal limbo indefinitely where there is no reasonable likelihood of [her] parents gaining

necessary parenting abilities." S.L. v. State, 965 P.2d 551, 561 (Utah Ct. App. 1998). The only parents that N.A.M. has known are Rick and Staci Myrin, her foster parents. There has been no question by any of the parties to these proceedings N.A.M. is bonded to the Myrins and that it is in the best interest of N.A.M. that she be adopted by the Myrins.

It is requested that the Court sustain the termination of the appellants' parental rights.

RESPECTFULLY submitted this 20th day of April, 1999.

McKEACHNIE, ALLRED,
McCLELLAN & TROTTER, P.C.
Attorneys for Appellees

By: _____
Clark B Allred

By: _____
Clark A. McClellan

MAILING CERTIFICATE

Clark B Allred, attorney for Petitioners certifies that he served the attached BRIEF OF APPELLEES, ALARIK AND STACI MYRIN, upon counsel by placing two true and correct copies thereon in an envelope addressed to:

MS JULIE MCPHERSON
321 SOUTH 600 EAST
SALT LAKE CITY UT 84102

MS MARTHA PIERCE
OFFICE OF THE GUARDIAN AD LITEM
450 SOUTH STATE STREET
P.O. BOX 140403
SALT LAKE CITY UT 84114-0403

MS CAROL VERDOIA
ASSISTANT ATTORNEY GENERAL
160 EAST 300 SOUTH, 6TH FLOOR
P.O. BOX 140833
SALT LAKE CITY UT 84114-0833

and deposited the same, sealed, with first class postage prepaid thereon, in the United States mail at Vernal, Utah, on the 20 day of April, 1999.

Clark B Allred

ADDENDUM "I"

EIGHTH DISTRICT JUVENILE COURT
FOR DUCHESNE COUNTY, STATE OF UTAH

STATE OF UTAH, in the interest of	**MEMORANDUM DECISION**
NICOLE ANN MACE (4-22-96)	**Case No.: 909850**
A Child Under 18 Years of Age	

I. FINDINGS OF FACT

Nicole Mace was born on April 22, 1996 to Dennis Mace and Amy Opsahl. Hospital staff made a referral to the Division of Child & Family Services (hereinafter DCFS) based on a lack of bonding between the mother and baby, and a need for special care relative to a heart monitor. The child was taken into custody on April 24, 1996 and a petition for custody filed by DCFS was adjudicated on June 5, 1996. The court returned the child to the parents under Protective Supervision. The child was hospitalized on June 5 and hospital staff refused to release her to her parents until the parents were trained in CPR and in the operation of the heart monitor. Because the parents did not avail themselves of the necessary training, a new petition was filed on June 10 seeking that custody be placed with DCFS.

The baby was taken into protective custody on June 10 for the second time pursuant to this second petition. Up to that time she had been in DCFS custody or in the hospital but never in the parents' custody. Temporary custody was granted by the court on June 12, 1996, after which DCFS began to implement a reunification plan which consisted of visitation between the parents and the baby as often as possible, establishment of a home appropriate for a newborn, having the parents learn parenting skills, CPR skills and heart and breath monitor skills. While this written treatment plan was very poorly drafted, almost devoid of the specificity necessary to be understood and carried out by low functioning parents, nevertheless DCFS made diligent efforts to provide services. A peer parent was provided to supervise visits and to teach parents appropriate parenting techniques. Peer parenting is an expensive and intensive program where an individual spends time with the parents, often daily, and often at all hours of the night, teaching them basic minimum parental functions which competent parents may take for granted, such as not feeding a newborn solid foods, changing diapers periodically, and how to bathe a baby. This peer parenting began immediately on June 12 with the goal of reuniting the baby with the parents as soon as possible. Initially the parents exhibited a lack of interest in caring for the baby, though limited progress was made.

Monitor training was arranged, the home was visited and inspected by DCFS, psychological evaluations for the parents were scheduled, and the DCFS worker and peer parent spent considerable time teaching and advising parents on things they needed to do. Visits of the child to the home gradually increased until overnight visits were allowed with the worker checking on the family late at night and early in the morning. The peer parent was in the home on thirteen different days within the first 30 days or so, and was on call whenever the parents had questions. She needed to be present or available to come to the home when the baby was there. Through June, July and August of 1996,

the parents passed the monitor training and visits were fairly regular. However, as time went on, the aunt, with whom the parents were living, began to handle the baby during visits, and on some occasions the parents weren't even present. When they were present the peer parent was frustrated that basic parenting skills had to be taught over and over again at each visit because the parents weren't retaining what they had been taught.

The parents' living arrangements were unacceptable to DCFS because they were living with various relatives or others who were either unacceptable themselves because of prior substantiated sex abuse referrals or who's homes did not meet basic minimum standards of cleanliness. The family received attention from DCFS in one form or another on 33 different days from June 12 to August 30.

In late August the parents appeared to begin to lose interest in the baby. The parents accepted the responsibility of requesting further visits. Visits became sporadic and then ceased. The parents continued to have unstable living arrangements. At one point DCFS and the parents' attorney lost track of the parents altogether because of their moving. They told the peer parent they were moving but wouldn't say where, so they were instructed to call when they were ready for visits to resume. They had no phone or transportation so communications ceased.

As the first treatment plan drew to a close at the end of 1996, the parents had complied with the requirement of receiving the monitor training and had recently (on December 18) obtained suitable housing. They were in non-compliance with visitation and learning parenting skills. There were no visits whatsoever between August 27 and December 18, though there would have been visits arranged anytime the parents had asked or even made their whereabouts known. Without visits it was not possible for the peer parent to teach parenting skills. There was no other regular contact or communication with the baby during this period.

Psychological assessments had been completed on both parents, the conclusions of which were that while the father lacked the cognitive abilities to care for himself without adult assistance, let alone care for and protect a baby, the mother was capable of learning parenting skills.

Meanwhile the baby had been with the same foster parents since three days after her birth, was developing love, affection and emotional ties to those foster parents and was becoming integrated into the foster family to the extent that her family identification was becoming that of the foster family. The foster home was stable and satisfactory. The baby was ahead developmentally and had outgrown the need for the heart and breath monitor. She recognized the foster parents as fulfilling the roles of parents in her life.

As second reunification treatment plan was implemented with a beginning date of January 1, 1997, although the parents' signatures bear the date of February 6, 1997. This treatment plan had more detail than the first one and therefore it was more easily understood and helpful to the parents. Visitation was still the key factor in reunification with the first four visits specified to be held at the

DCFS office for one hour, all to be completed within four weeks. Thereafter the visits were allowed in the parents' home and could be longer. Transportation and cancellation policies were clear, as was designation of who could be present, and who was to supervise the visits.

In addition, parenting classes were required, as well as appropriate housing, peer parenting, and a vague requirement to "explore occupational and educational opportunities" and to "plan financially for their family and work towards self-sufficiency."

Visits were re-established for December 23 but the parents' attorney failed to notify the parents and the first visit since August was January 2, 1997. Visits on January 16 and January 22 were both canceled because the baby was sick. Visits did take place on January 2, January 9 and February 6, with no substantial problems but with some concerns. The parents canceled the visits for January 30 and February 13.

During the months of January and February 1997 the parents failed to attend any parenting classes though everything had been arranged by DCFS for the parents to attend; nor did the parents make any efforts toward exploring occupational or educational opportunities or in doing any financial planning to work toward self-sufficiency. The social worker went over the treatment plan very carefully with the parents to be sure that they understood and emphasized the urgency of immediately establishing a relationship with the baby. The parents did have clean and adequate housing. They failed to avail themselves of WIC (Well Infant Child) services which were free of cost to the parents, even though the social worker requested them to do so.

Peer parenting was attempted again beginning in February 1997. It was necessary to begin at the beginning because the parents had retained nothing from the previous sessions. The parents were not receptive to the peer parent because they felt that she was more interested in persuading them to use birth control than in teaching parenting skills.

In March a bonding assessment evaluation was conducted on the baby, the parents and the foster parents by the Family and Attachment Center, the conclusion of which was that there was no significant bond between the baby and the parents and that the parents lacked the basic parenting skills necessary to care for her emotional and physical well-being. Conversely the baby exhibited secure healthy and normal parent/child attachment to the foster parents.

Also in March a second parenting class was offered to the parents. They failed to attend any of the classes but did attend five of six sessions arranged independent of DCFS by the parents' attorney with the attorney's sister, who had taught parenting classes in the past. The parents missed approximately one-half of the scheduled visits with the baby in March and April. On some of those visits the parents showed up late after the baby and the foster parents had left. Peer parenting continued through April with no significant change in parenting skills. The baby was treating the visits as visits with strangers or at best acquaintances, but not as parents, with some increasing anxiety and some sleep loss after the visits. The parents seemed uncomfortable and relieved to get the visits over with.

The court terminated the DCFS obligation to attempt to reunify the family on April 24, 1997. Since that time there has been no visitation or other communication between the parents and the baby and the parents have made to efforts to change their circumstances. The baby has become evermore integrated and attached to the only family she has ever known. At no time have the parents ever contributed to the cost of caring for the baby. They have never been financially able to do so, and no contribution has been solicited. The foster parents wish to adopt. They appear able and willing in every way to provide for the needs of this child as they have done since her birth.

II. CONCLUSIONS OF LAW

A. GROUNDS FOR TERMINATION

The court concludes that the parents have exhibited a conscious disregard of their parental obligations which has lead to the destruction of the parent child relationship. Therefore, as alleged in the foster parents' petition, the parents have abandoned the child within the definition of Utah Code Annotated 78-3a-407(1).

The mother has neglected this child within the meaning of 78-3a-407(2) by repeated or continuous failure to provide the child with adequate food, clothing, shelter, education or other care necessary for the physical, mental, and emotional health and development of the child, the mother being capable of providing such care.

The father is unfit or incompetent within the meaning of 78-3a-407(3) in that his mental deficiency renders him unable to care for the immediate and continuous physical or emotional needs of the child for an extended period of time.

This child has been in an out of home placement since birth, and DCFS for a period of 12 months made diligent efforts to provide appropriate services. The parents neglected, refused or were unwilling or unable to remedy the circumstances that caused the out of home placement. The court notes that the 78-3a-407(4) does not require that the circumstances to be remedied are those which caused the original removal. Rather the statute requires the remedying of the circumstances that cause out of home placement. In other words, the causes of the out of home placement are fluid as dangers to the child change while the child is in out of home placement. While the primary cause of the original removal was the need to train the parents on the operation of the heart/breath monitor, it immediately became clear that the parents were not capable of providing the child with adequate food, clothing, shelter or other care necessary for her physical, mental and emotional health and development. This parental unfitness caused the continued out of home placement and must be considered in an analysis of 78-3a-407(4) along with those causes of the initial removal. Further, there is a substantial likelihood that the parents will not be capable of exercising proper parental care in the near future.

The parents have been unable or unwilling within a reasonable time to substantially correct the circumstances that lead to the placement, notwithstanding reasonable and appropriate efforts by DCFS to return the child to the parents. Specifically the parents have failed to comply substantially with two different treatment plans. This child was removed from the parents' custody as a baby and has been out of their custody for over a year and one-half, the childs entire life, in spite of a diligent effort by DCFS at reunification. Again, the circumstances which lead to the placement of the child are not limited to the original removal, but rather include other circumstances which developed during the placement and which prevent return of the child to her parents. This failure of parental adjustment has been notwithstanding reasonable and appropriate efforts by DCFS to return the child to the parents.

The parents have made only token efforts and in some cases no efforts at all to support or communicate with the child, to eliminate the risk of serious physical, mental or emotional abuse, and to avoid being unfit in accordance with 78-3a-407(6).

The court concludes that while parental rights are constitutionally protected, the legislature is not prevented from altering the statutory grounds for termination. Protecting children and providing permanency for them are compelling state interests. The addition of Section (4), (5), and (6) to 78-3a-407 was within the province of the legislature to do, and these subsections are not arbitrary or capricious, and therefore are not unconstitutional.

B. BEST INTEREST OF THE CHILD

After consideration of the physical, mental and emotional needs of the child, the efforts that the parents have made to adjust to make it in the child's best interest to return home within a reasonable time, the lack of regular visitation and the failure to maintain regular contact and communication, the court concludes that it is in the best interest of this child that the parent/child relationship between her and her natural parents be terminated.

This child has become integrated into the foster family to the extent that her familial identity is with that family. The foster family is able and willing to permanently treat the child as a member of the family. There exists a love, affection and other emotional ties between the child and the foster parents which does not exist between the child and the parents. The capacity and disposition of the foster parents to give the child love, affection and guidance and to continue the education of the child far surpasses the capacity and disposition of the parents. The length of time in a stable satisfactory foster home and the desirability of continuing to live there, and the permanence of the foster family as a unit all make it in the best interest of this child that she remain in the foster home.

ORDER

IT IS THEREFORE ADJUDGED, ORDERED AND DECREED: That the parent/child relationship between this child and her parents be terminated. A review hearing shall be held within 90 days if this child has not been permanently placed by then. The Assistant Attorney General is directed to draft Findings and Conclusions and an Order within 15 days consistent with this decision.

Dated this 6th day of November, 1997.

BY THE COURT:

Scott N. Johansen, Judge

ADDENDUM "II"

Edwin T. Peterson #3849
Assistant Attorney General
JAN GRAHAM #1231
ATTORNEY GENERAL
Attorney for State of Utah
140 West 425 South (330-15)
Roosevelt, Utah 84066
Telephone: (801) 722-6546

IN THE EIGHTH DISTRICT JUVENILE COURT
DUCHESNE COUNTY, STATE OF UTAH

STATE OF UTAH In the interest of: **MACE, Nicole Ann 04/22/96** A person(s) under 18 years of age.	**FINDINGS OF FACT AND CONCLUSION S OF LAW AND ORDER TERMINATING PARENTAL RIGHTS** Case No. 909850 Judge: Scott N. Johanson

This matter came before the Honorable Scott N. Johanson for trial on the State of Utah's Verified Petition for Termination of Parental Rights with respect to the parental rights of Dennis Mace and Amy Opshal Mace to the above-named Child on the 28th and 29th day of October, 1997 at 9:30 a.m. Edwin T. Peterson, Assistant Attorney General, appeared on behalf of the State of Utah, Division of Child and Family Services ("DCFS"). William McCairns was present as the representative of DCFS. Cleve Hatch appeared as the Guardian ad Litem for the above-referenced child (the "Child"). Patricia Geary was present representing Dennis Mace and Amy

Opsahl Mace, the natural parents of the above-named Child (the "Parents"), who were present. Clark Allred was present representing Rick and Stacy Myrin (the "Foster Parents").

Based on the exhibits presented into evidence by the parties, the testimony of the witnesses made in open court, the arguments and presentation of counsel, and the pleadings on file herein and good cause appearing, the Court hereby finds that it has jurisdiction over the matter and pursuant to Utah Code Ann. §78-3a-104(1)(c) and Utah Code Ann. §78-3a-104(1)(e) et seq., the Termination of Parental Rights Act, makes the following findings of fact and order:

FINDINGS OF FACT

1. DCFS's Petition for Termination of Parental Rights was filed with this Court on or about May 8, 1997, by Edwin T. Peterson, the Assistant Attorney General.

2. The contents of the petition are sufficient and in accordance with Utah Code Ann. §78-3a-405.

3. Based on the evidence presented and upon the pleadings filed herein, the court finds that the petitioner has established the following facts by clear and convincing evidence:

A. Nicole Mace was born on April 22, 1996 to Dennis Mace and Amy Opsahl. Hospital staff made a referral to the Division of Child and Family Services (hereinafter DCFS) based on a lack of bonding between the mother and the baby, and a need for special care relative

to a heart monitor. The child was taken into custody on April 24, 1996 and a petition for custody filed by DCFS was adjudicated on June 5, 1996.

B. The court returned the child to the parents under Protective Supervision. The child was hospitalized on June 5 and hospital staff refused to release her to her parents until the parents were trained in CPR and in the operation of the heart monitor.

C. Because the parents did not avail themselves of the necessary training, a new petition was filed on June 10 seeking custody be placed with DCFS.

D. The baby was taken into protective custody on June 10 for the second time pursuant to this second petition. Up to that time she had been in DCFS custody or in the hospital but never in the parent's custody. Temporary custody was granted by the court on June 12, 1996, after which DCFS began to implement a reunification plan which consisted of visitation between the parents and the baby as often as possible, establishment of a home appropriate for a newborn, having the parents learn parenting skills, CPR skills and heart and breath monitor skills.

E. While this written treatment plan was very poorly drafted, almost devoid of the specificity necessary to be understood and carried out by low functioning parents, nevertheless DCFS made diligent efforts to provide services.

F. A peer parent was provided to supervise visits and to teach parents appropriate parenting techniques. Peer parenting is an expensive and intensive program where an individual spends time with the parents, often daily, and often at all hours of the night, teaching them basic minimum parental functions which competent parents may take for granted, such as not feeding a newborn solid foods, changing diapers periodically, and how to bathe a baby. This peer parenting began immediately on June 12 with the goal of reuniting the baby with the parents as soon as possible. Initially the parents exhibited a lack of interest in caring for the baby, though limited progress was made.

G. Monitor training was arranged, the home was visited and inspected by DCFS, psychological evaluations for the parents were scheduled, and the DCFS worker and peer parent spent considerable time teaching and advising parents on things they needed to do.

H. Visits of the child to the home gradually increased until overnight visits were allowed with the worker checking on the family late at night and early in the morning. The peer parent was in the home on thirteen different days within the first 30 days or so, and was on call whenever the parents had questions. She needed to be present or available to come to the home when the baby was there.

I. Through June, July and August of 1996, the parents passed the monitor training and visits were fairly regular. However, as time went on, the aunt, with whom the parents were living, began to handle the baby during visits, and on some occasions the parents weren't even present. When they were present the peer parent was frustrated that basic parenting skills had to be taught over and over again at each visit because the parents weren't retaining what they had been taught.

J. The parent's living arrangements were unacceptable to DCFS because they were living with various relatives or others who were either unacceptable themselves because of prior substantiated sex abuse referrals or who's homes did not meet basic minimum standards of cleanliness. The family received attention from DCFS in one form or another on 33 different days from June 12 to August 30.

K. In late August the parents appeared to begin to lose interest in the baby. The parents accepted the responsibility of requesting further visits. Visits became sporadic and then ceased. The parents continued to have unstable living arrangements. At one point DCFS and the parents' attorney lost track of the parents altogether because of their moving. They told the peer parent

they were moving but wouldn't say where, so they were instructed to call when they were ready for visits to resume. They had no phone or transportation so communications ceased.

L. As the first treatment plan drew to a close at the end of 1996 the parents had complied with the requirement of receiving the monitor and had recently (on December 18) obtained suitable housing. They were in non-compliance with visitation and learning parenting skills. There were no visits whatsoever between August 27 and December 18, though there would have been visits arranged anytime the parents had asked or even made their whereabouts known. Without visits it was not possible for the peer parent to teach parenting skills. There was no other regular contact or communication with the baby during this period.

M. Psychological assessments had been completed on both parents, the conclusions of which were that while the father lacked the cognitive abilities to care for himself without adult assistance, let alone care for and protect a baby, the mother was capable of learning parenting skills.

N. Meanwhile the baby had been with the same foster parents since three days after her birth, was developing love, affection and emotional ties to those foster parents and was becoming integrated into the foster family to the extent that her family identification was becoming that of

the foster family. The foster home was stable and satisfactory. The baby was ahead developmentally and had outgrown the need for the heart and breath monitor. She recognized the foster parents as fulfilling the roles of parents in her life.

O. A second reunification treatment plan was implemented with a beginning date of January 1, 1997, although the signatures bear the date of February 6, 1997. This treatment plan had more detail than the first one and therefore it was more easily understood and helpful to the parents. Visitation was still the key factor in reunification with the first four visits specified to be held at the DCFS office for one hour, all to be completed within four weeks. Thereafter the visits were allowed in the parents' home and could be longer. Transportation and cancellation policies were clear, as was designation of who could be present, and who was to supervise the visits.

P. In addition, parenting classes were required, as well as appropriate housing, peer parenting, and a vague requirement to "explore occupational and educational opportunities" and to "plan financially for their family and work towards self-sufficiency."

Q. Visits were re-established for December 23 but the parents' attorney failed to notify the parents and the first visit since August was January 2, 1997. Visits on January 16 and January

22 were both canceled because the baby was sick. Visits did take place on January 2, January 9 and February 6, with no substantial problems but with some concerns. The parents canceled the visits for January 30 and February 13.

R. During the months of January and February 1997 the parents failed to attend any parenting classes though everything had been arranged by DCFS for the parents to attend; nor did the parents make any efforts toward exploring occupational or educational opportunities or in doing any financial planning to work toward self-sufficiency. The social worker went over the treatment plan very carefully with the parents to be sure that they understood and emphasized the urgency of immediately establishing a relationship with the baby. The parents did have clean and adequate housing. They failed to avail themselves of WIC (Well Infant Child) services which were free of cost to the parents, even though the social worker requested them to do so.

S. Peer parenting was attempted again beginning in February 1997. It was necessary to begin at the beginning because the parents had retained nothing from the previous sessions. The parents were not receptive to the peer parent because they felt that she was more interested in persuading them to use birth control than in teaching parenting skills.

T. In March a bonding assessment evaluation was conducted on the baby, the parents and the foster parents by the Family and Attachment Center, the conclusion of which was that there was no significant bond between the baby and the parents and that the parents lacked the basic parenting skills necessary to care for her emotional and physical well-being. Conversely the baby exhibited secure healthy and normal parent/child attachment to the foster parents.

U. Also in March a second parenting class was offered to the parents. They failed to attend any of the classes but did attend five of six sessions arranged independent of DCFS by the parents' attorney with the attorney's sister, who had taught parenting classes in the past. The parents missed approximately one-half of the scheduled visits with the baby in March and April. On some of those visits the parents showed up late after the baby and the foster parents had left. Peer parenting continued through April with no significant change in parenting skills. The baby was treating the visits as visits with strangers or at best acquaintances, but not as parents, with some increasing anxiety and some sleep loss after the visits. The parents seemed uncomfortable and relieved to get the visits over with.

V. The court terminated the DCFS obligation to attempt to reunify the family on April 24, 1997. Since that time there has been no visitation or other communication between the parents

and the baby and the parents have made no efforts to change their circumstances. The baby has become evermore integrated and attached to the only family she has ever known. At no time have the parents ever contributed to the cost of caring for the baby. They have never been financially able to do so, and no contribution has been solicited. The foster parents wish to adopt. They appear able and willing in every way to provide for the needs of this child as they have done since her birth.

CONCLUSIONS OF LAW

GROUNDS FOR TERMINATION

A. The court concludes that the parents have exhibited a conscious disregard of their parental obligations which has lead to the destruction of the parent child relationship. Therefore, as alleged in the foster parents' petition, the parents have abandoned the child within the definition of Utah Code Annotated 78-3a-407(1).

B. The mother has neglected this child within the meaning of 78-3a-407(2) by repeated or continuous failure to provide the child with adequate food, clothing, shelter, education or other care necessary for the physical, mental and emotional health and development of the child, the mother being capable of providing such care.

C. The father is unfit or incompetent within the meaning of 78-3a-407(3) in that his mental deficiency renders him unable to care for the immediate and continuous physical or emotional needs of the child for an extended period of time.

D. This child has been in an out of home placement since birth, and DCFS for a period of 12 months made diligent efforts to provide appropriate services. The parents neglected, refused or were unwilling or unable to remedy the circumstances that caused the out of home placement. The court notes that the 78-3a-407(4) does not require that the circumstances to be remedied are those which caused the original removal. Rather the statute requires the remedying of the circumstances that cause out of home placement. In other words, the causes of the out of home placement are fluid as dangers to the child change while the child is in out of home placement. While the primary cause of the original removal was the need to train the parents on the operation of the heart/breath monitor, it immediately became clear that the parents were not capable of providing the child with adequate food, clothing, shelter or other care necessary for her physical, mental and emotional health and development. This parental unfitness caused the continued out of home placement and must be considered in an analysis of 78-3a-407(4) along

with those causes of the initial removal. Further, there is a substantial likelihood that the parents will not be capable of exercising proper parental care in the near future.

E. The parents have been unable or unwilling within a reasonable time to substantially correct the circumstances that lead to the placement, notwithstanding reasonable and appropriate efforts by DCFS to return the child to the parents. Specifically the parents have failed to comply substantially with two different treatment plans. This child was removed from the parents' custody as a baby and has been out of their custody for over a year and one-half, the child's entire life, in spite of a diligent effort by DCFS at reunification. Again, the circumstances which lead to the placement of the child are not limited to the original removal, but rather include other circumstances which developed during the placement and which prevent return of the child to her parents. This failure of parental adjustment has been notwithstanding reasonable and appropriate efforts by DCFS to return the child to the parents.

F. The parents have made only token efforts and in some cases no effort at all to support or communicate with the child, to eliminate the risk of serious physical, mental or emotional abuse, and to avoid being unfit in accordance with 78-3a-407(6).

G. The court concludes that while parental rights are constitutionally protected, the legislature is not prevented from altering the statutory grounds for termination. Protecting children and providing permanency for them are compelling state interests. The addition of Section (4), (5), and (6) to 78-3a-407 was within the province of the legislature to do, and these subsections are not arbitrary or capricious, and therefore are not unconstitutional.

BEST INTEREST OF THE CHILD

A. After consideration of the physical, mental and emotional needs of the child, the efforts that the parents have made to adjust to make it in the child's best interest to return home within a reasonable time, the lack of regular visitation and the failure to maintain regular contact and communication, the court concludes that it is in the best interest of this child that the parent/child relationship between her and her natural parents be terminated.

B. The child has become integrated into the foster family to the extent that her familial identity is with that family. The foster family is able and willing to permanently treat the child as a member of the family. There exists a love, affection and other emotional ties between the child and the foster parents which does not exist between the child and the parents. The capacity and disposition of the foster parents to give the child love, affection and guidance and to continue

the education of the child far surpasses the capacity and disposition of the parents. The length of time in a stable satisfactory foster home and the desirability of continuing to live there, and the permanency of the foster family as a unit all make it in the best interest of this child that she remain in the foster home.

Upon consideration of the provisions set forth in Utah Code Ann. §78-3a-401 et seq, the court finds that it is in the best interests of the Child that the parental rights of Dennis Mace and Amy Opsahl Mace should be terminated.

ORDER TERMINATING PARENTAL RIGHTS

1. The statutory requirements having been met, the Court hereby terminates any and all parental rights of Dennis Mace and Amy Opsahl Mace to Nicole Ann Mace, born 04/22/96.

2. That temporary care, custody, control and guardianship of Nicole Ann Mace is continued with DCFS for one (1) year unless modified by this court in the dispositional phase of this matter.

3. Pursuant to Utah Code Ann. §78-3a-413(1), this order shall divest the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other, except the right of the child to inherit from the parents.

5. Pursuant to Utah Code Ann. §78-3a-413(2), this order does not disentitle the Child to any benefit due her from any third person, including, but not limited to, any Indian tribe, agency, state, or the United States.

6. Pursuant to Utah Code Ann. §78-3a-413(3), the parents shall forthwith neither be entitled to any notice of proceedings for the adoption of the child nor shall have any right to object to the adoption or to participate in any other placement proceedings.

7. In accordance with Utah Code Ann. §78-3a-412, a review of this matter, including the dispositional phase of this matter, shall be held within 90 days.

DATED this 31st day of December, 1997.

BY THE COURT

Honorable Scott N. Johanson
Juvenile Court Judge